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No. 88-375

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

HWESU S. MURRAY,

Petitioner.

vs.

NATIONAL BROADCASTING COMPANY, INC., and BRANDON TARTIKOFF,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITIONER'S BRIEF IN REPLY

JOSEPH J. SANTORA
Counsel of Record

MICHAEL S. ALLEN
SANTORA & MCKAY
521 Fifth Avenue
New York, New York 10175
(212) 692-9700

Counsel for Petitioner

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-against-

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PETITIONER'S BRIEF IN REPLY

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Petitioner Hwesu S. Murray respectfully submits this brief in reply to an argument first raised in

Respondents' Brief In Opposition ("Opp. Br.") to petitioner's Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit.

ARGUMENT

RECOGNIZING THE ABSENCE OF MERIT IN THEIR "LACK OF NOVELTY" ARGUMENT, RESPONDENTS IMPROPERLY SEEK TO SUSTAIN THE GRANT OF SUMMARY JUDGMENT ON A NEW GROUND

Respondents argue that the Petition should be denied and the decision below let stand because one of petitioner's claims - for conversion - either is deficient on its merits or is preempted by the Copyright Act, 17 U.S.C. §301,

citing Harper & Row, Publishers, Inc. v. Nation Enterprises, 723 F.2d 195, 201 (2d Cir. 1983), rev'd on other grounds, 471 U.S. 539 (1985) (Opp. Br., p. 8, fn. 7).

It is respectfully submitted that the conversion claim is valid, as evidenced by respondents' failure to address the cases establishing that (Petition, pp. 58-60). It is also respectfully submitted that that claim is not preempted, as this is not a case involving use and publication of specific words, i.e., the expression of an idea, as was the case in Harper & Row, Publishers, Inc. v. Nation Enterprises, supra.

However, the primary point for purposes of this proceeding is that

respondents' new argument is irrelevant to the errors in the decision below. Respondents concede that they "moved for and were granted summary judgment on a single, narrow ground..." - lack of novelty (Opp. Br., p.3). Therefore, such arguments may only become relevant, though still without merit, after the decision below is reversed and this case remanded to the District Court; that Court grants permission for respondents to move on such arguments; and such a motion is made and such arguments addressed.

It is respectfully submitted that the only possible relevance of the raising of these additional alleged grounds by respondents is their

recognition that their "lack of novelty" ground is lacking in merit.

CONCLUSION

For the reasons set forth in the Petition, a writ of certiorari should issue in this case to review the judgment and opinion of the Second Circuit Court of Appeals.

Dated: New York, New York
October 31, 1988

Respectfully submitted,

JOSEPH J. SANTORA

Counsel of Record

MICHAEL S. ALLEN
SANTORA & McKAY
521 Fifth Avenue
New York, NY 10175
(212) 692-9700

Counsel for Petitioner